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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,103	11/12/2003	Douglas Craig Scott	9118M2	5133
27752 7590 02/27/2009 THE PROCTER & GAMBLE COMPANY Global Legal Department - IP Sycamore Building - 4th Floor 299 East Sixth Street CINCINNATI, OH 45202				
EXAMINER				
GEMBEHL, SHIRLEY V				
ART UNIT		PAPER NUMBER		
1618				
MAIL DATE		DELIVERY MODE		
02/27/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/706,103

Applicant(s)

SCOTT ET AL.

Examiner

SHIRLEY V. GEMBEH

Art Unit

1618

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 8-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 8-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The response filed on **12/16/08** has been entered.
2. Applicant's arguments filed 12/16/08 have been fully considered but they are not deemed to be persuasive.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-4 and 8-17 are pending in this office action.
5. The rejection of claim 14 under 35 U.S.C. 112, first paragraph, as lacking enablement is withdrawn due to the amendment of the claims.
6. Claims 1-4, 8-12 and 14 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Lawlor (US 6,706,256) in view of Fine et al. (US 4,374,822) for the reasons made of record in Paper No. 20080710.

Applicant argues that Lawlor and Fine do not establish a prima case of obviousness because there is no motivation to combine them and even if combined neither Lawlor nor Fine suggest all of the claimed limitations of the instant invention.

Applicant argues that Lawlor does not disclose any of the claimed retentive agents and that Lawlor's composition is not visible in subject's teeth 5 minutes after chewing or any time beyond that.

Applicant also argues that Fine does not render the present invention obvious, that Fine's invention is directed towards flavorings and not to a composition that would stick and remain visible in a subject's teeth for an extended period of time.

In response Lawlor specifically teach water insoluble particulate retentive agent such as mica, zinc oxide, (see col. 19, lines 22-40). Therefore the argument that Lawlor does not teach disclose/teach any of the claimed retentive agents is found not persuasive because as already of record, mica and zinc oxide would necessarily have the same solubility of 1g/30g at 25° C or less than 1g/100g at 25°C as claimed. Next, Lawlor teaches the resultant crunchy sensation is noticeable. Therefore if the same agents as discussed above are chewed, one would expect them to be visible after 5 mins because it is the agent that causes the crunchy sensation, (see col. 17, lines 25-31). Lawlor failed to teach the percentage of the retentive particulate as 35-65% and is silent to the teaching of a non-effervescent, therefore Fine was introduced. Fine et al. teach dental oral composition such as chewable tablet, the water-insoluble polishing agent such as (magnesium carbonate) which is one of the claimed retentive particulate maybe present from 20-75%. See col. 3, lines 26-36.

Thus one of ordinary skill in the art would have combined the both Lawlor and Fine to achieve the claimed invention at the time the claimed invention was made, and for the reasons previously made of record.

7. Claims 13 and 15-17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Lawlor (US 6,706,256) in view of Fine et al. (US 4,374,822) **as applied to claims 1-4 and 8-11** above and as evidenced by Grossman et al. (1937) for the reasons made of record in Paper No. 20080710 and as follows.

The same argument is applied here as supra.

With regard to claim 13, since Lawlor teaches the composition, one would expect the composition when chewed or administered to the oral cavity to have the same pH of 7-12 (as it relates to claim 12) because the same compositions claimed are used in the Lawlor teaching. Although Lawlor does not specifically teach buffering to a pH from 7-12 as recited (claim 13), Lawlor does teach the composition could be buffered to a pH of 10 (col. 22, lines 1-15). Therefore one of ordinary skill in the art would recognize that by chewing the Lawlor's composition accompanied by brushing will raise the pH of saliva in the mouth. It is known to one of ordinary skill in the art that the pH of saliva ranges from 5.0 to 8.0 with the average of 6.5-6.9. Therefore having a composition comprising magnesium carbonate, for example at a higher pH, introduced into the mouth will buffer the saliva to a higher pH. See as evidenced by Grossman previously made of record (see entire document).

Since Lawlor teaches mica, zinc oxide, (same as claimed invention), intrinsically this composition will also have the same solubility of 1g/30g at 25° C or less than 1g/100g at 25°C, (as recited in claims 15 and 17).

With regard to instant claim 16, the same composition is already discussed above. Although Lawlor does not teach expectorating the slurry from the brushing, it is common for one to expectorate slurry after brushing. Thus, one of ordinary skill in the art would have known that expectorating slurry after brushing is expected with a reasonable expectation of success.

8. No claim is allowed.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHIRLEY V. GEMBEH whose telephone number is (571)272-8504. The examiner can normally be reached on 8:30 -5:00, Monday- Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL HARTLEY can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. V. G./
Examiner, Art Unit 1618
2/20/09

/Robert C. Hayes/
Primary Examiner, Art Unit 1649